

## **AGENDA**

### **COMMITTEE ON LANDS AND BUILDINGS**

**February 19, 2008  
Aldermen Smith, Gatsas  
Osborne, M. Roy, J. Roy**

**Immediately following Public Safety  
Aldermanic Chambers  
City Hall (3<sup>rd</sup> Floor)**

1. Chairman Gatsas calls the meeting to order.
2. The Clerk calls the roll.

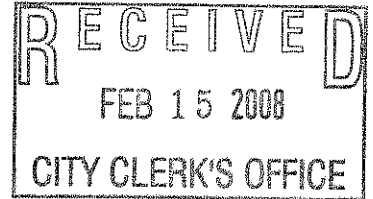
#### **TABLED ITEM**

*A motion is in order to remove the following item from the table.*

3. Communication from Brandy Stanley, Parking Manager, regarding a lease agreement for Wall Street Towers.  
*Tabled 2/11/08 pending further info from Parking Manager and Finance Officer.*  
*(Note: Includes 2/14/08 analysis from Brandy Stanley of the issues surrounding the Wall Street Tower lease; and communication from Finance Officer.)*
4. If there is no further business a motion is in order to adjourn.

## Parking Division

# Memo



**To:** Lands & Buildings Committee Members  
**From:** Brandy Stanley  
**CC:** Board of Mayor and Aldermen, Jay Minkarah  
**Date:** 2/14/2008  
**Re:** Proposed Wall Street Tower Lease

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Per the request of the Lands & Buildings Committee, this memo will further outline the issues surrounding the Parking Division's request to continue leasing parking spaces at the Wall Street Tower under a new lease. Following are several options for action and the resulting consequences of each particular option.

### City Employees

Currently, there are 120 city employees that are issued access cards for the facility. Below are our options for accommodating these employees and the issues accompanying each option.

- **Option 1: Relocate All Employees to Victory Garage** – The victory garage currently has enough capacity to accommodate the city's employees.
  - The City owns the parking garage and would not incur direct expenses associated with parking them in the facility.
  - The Victory garage is approximately 1 ½ blocks from city hall, while the Wall Street Tower garage is 3 blocks away; therefore city employees would not be required to walk as far as they currently do.
  - After an occupancy review of the garage, we found that of the 850 spaces in the garage, peak occupancy is 725 vehicles, leaving an open space count of 125.
  - If we relocate the employees to the parking garage, the garage will be full, and no additional leasing to area businesses will be possible. A few specific examples of this impact are detailed below.
    - The redevelopment of the building at 20 Concord Street stimulated by the city's new tax credit was depending upon parking availability to make the building viable. We will no longer be able to sell parking to the new tenants of this building.
    - The building on the corner of Hanover and Elm, 889 Elm, has a high vacancy rate and no onsite parking spaces. The Owners have repeatedly called the

parking division in the past verifying that we have the capacity to support leasing activities. This will no longer be the case.

- The building on the corner of Vine and Amherst Street, 30 Amherst, is near completion of the redevelopment of its space and has no parking. New tenants will rely upon the Victory garage for parking, which will no longer be available.
- The indirect costs associated with relocating the employees are the loss of revenue on leased parking spaces. We now have the ability to lease those 120 spaces at \$70 per month, and as detailed above, certain future demand exists. We would be unable to realize that revenue at \$70 per space per month.
- The Victory garage is more advantageously located for most downtown businesses, and is more professionally operated. For these reasons, parkers turned away from the Victory garage will not in turn lease spaces at the Wall Street Tower. Leasing of office and retail space requires proximate parking, and the Wall Street Tower offers this amenity for few downtown businesses.
- **Option 2: Relocate 50% of the Employees to the Victory Garage**
  - This option would preserve some leasing capability for the parking division.
  - The cost of leasing employee spaces would be reduced.
  - The City would need to carefully consider how it determines which employees park in the Victory garage and which employees park in the Wall Street Tower garage to avoid potential equity problems. The parking division would work carefully with the HR department to develop this policy.
  - This option would limit the spaces available for lease.
  - If all of the remaining spaces were leased and there was further demand for more spaces, the parking division could move employees to the Wall Street Tower garage as necessary. If this were the case, the cost of parking the employees in the Wall Street Tower would be offset by the revenue gained from leasing the spaces in the Victory Garage.
  - If a policy to relocate employees back to Wall Street Tower based on demand at the Victory Garage is instituted, the City would experience a calendar month delay in moving parkers over, reducing the leasing flexibility of the parking division.
- **Option 3: Continue Parking all Employees in the Wall Street Tower Garage**
  - This option would preserve all leasing capability immediately. As evidenced by the specific examples of leasing potential and rehabilitation projects nearing completion, the likelihood of leasing the remaining spaces in a very short period of time is high.
  - Spaces would be able to be leased on demand, instead of requiring a calendar month waiting period.
  - Keeping all of the employees in one location eliminates potential human resource inequity issues.

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### **Seacoast Career School Students and Faculty**

The accommodation of Seacoast Career Schools in the Wall Street Tower garage was one aspect of the recently implemented Millyard Parking Plan. At the time the plan was implemented, ***the city did not pay any additional monthly fees for parking them in the Wall Street Tower.*** The city was still obligated to pay for 400 parking spaces under the existing lease, and Seacoast Career Schools has been using spaces in the garage that were already being paid for by the city. Following is a recap of the benefits this move has realized.

- The Millyard Parking Plan created capacity for 300 additional vehicles in the Millyard. A full third of this capacity was created by removing Seacoast Career Schools from Commercial Street in the north end.
- The parking division has leased 241 additional parking spaces since the Millyard Parking Plan was implemented. This represents an average of 44 permits leased per month.
- Meter revenue has doubled since the implementation of the Millyard Parking Plan, which means that we are accommodating over 75 more vehicles per day than we were prior to the implementation.
- If leasing levels continue at 50% of their current rates, the net annual BENEFIT to the city for the Millyard Parking Plan is \$65,000, providing Seacoast continues to be accommodated in the Wall Street Tower garage.

Following are a number of options for Seacoast Career School parkers along with an analysis of implications for each option.

- **Option 1: Park All Seacoast Parkers in the Wall Street Tower**

- This option will preserve leasing capacity in the Millyard. There is capacity to lease approximately 175 spaces in the Arms Lot / Bedford Lot / Bedford Street zone.
- At 50% of current leasing levels, we have approximately 8-10 months until we can no longer lease spaces in this zone, provided Seacoast remains in the Wall Street Tower.
- If we move Seacoast to the Bedford Lot, we will only be able to lease 35 additional spaces in this zone. At 50% of current leasing levels, we will have to stop selling permits within 2 months.
- This option will result in an annual net benefit to the city as a result of the Millyard Parking Plan of \$65,000.

- **Option 2: Move all Seacoast Parkers to the Bedford Lot**

- We will only be able to lease 35 additional spaces in this zone. At 50% of current leasing levels, we will have to stop selling permits within 2 months.
- This option will result in an annual net benefit to the city as a result of the Millyard Parking Plan of \$117,000.
- Some specific impacts on the halt of leasing spaces are listed below.
  - DEKA has plans to hire additional employees in the 340 Commercial Street building, and unless they are the first 35 permits requested, we would not be able to accommodate parking for them.

- College Street Management appears to be moving forward with plans to redevelop 300 Bedford Street. They will require permits on Bedford Street to complement this development, and we would not be able to accommodate them.
- The relocation of the Seacoast parkers to the Millyard will represent a step backwards for the Millyard from an economic development aspect. Development and leasing activity will halt and there will be no room for existing tenants to expand or hire additional employees.
- **Option 3: Relocate Seacoast to the Pearl Street Parking Lot**
  - The Pearl Street parking lot has enough open spaces to accommodate Seacoast at this time.
  - The Pearl Street parking lot has approximately 300 parking spaces and is leasing 377 permits.
  - It is our belief that property owners are holding permits for future leasing without issuing them to parkers.
  - Should any of these unissued permits be given to actual parkers, we will have an untenable capacity problem.

#### **Additional Option for Obtaining Parking in the Wall Street Tower**

- **Explore the Possibilities of Exchanging Parking Rights for Reduction of Debt**
  - Discussions with the finance director regarding the financing structure of the building and the possible exchange of parking rights for reduction of the outstanding debt owed to the city have revealed a possible winning scenario for both the City and the Wall Street Tower. Further analysis will be forthcoming from the finance department under separate cover.
  - Wall Street Tower will owe a balloon payment of approximately \$22 million in 2015 to the MDC.
  - The City could gain rights to park vehicles in the garage if it is willing to reduce that debt according to the value of the parking rights.
    - If the City gains parking rights in the garage, it could offer spaces to interested parties other than Seacoast Career Schools.
    - This option would effectively give the city control over additional spaces without incurring the cost of construction.
    - If used as a resource for the Millyard, these spaces would extend the time for additional leasing well beyond the currently projected 8-10 months.
    - The additional spaces could also be used to relocate parkers during construction of parking structures in the Millyard, specifically relating to the Seal-Tanning and Granite Street lots and the Bedford lot in the future, should a structure be authorized on that site.

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- During a preliminary discussion, Wall Street Tower ownership expressed interest in exploring this option, as they believe it could benefit the long and short term financial viability of the building.
- If it is the wish of the Board of Mayor and Aldermen to further investigate this option, it is our recommendation that city staff be authorized to revise the proposed lease to a month-to-month agreement and execute it in order to minimize negative effects of relocating parkers.

Please do not hesitate to call me with requests for additional information, and I look forward to our discussion on February 19<sup>th</sup>. I can be reached at 624-6580 at your convenience.

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*William E. Sanders  
Finance Officer*

**CITY OF MANCHESTER**  
*Finance Department*

February 15, 2008

Land & Buildings Committee Members  
C/o City Clerk  
One City Hall Plaza  
Manchester, NH 03101

Dear Committee Members:


As requested at the February 11, 2008 Lands & Building Committee meeting, below is information on the outstanding loans from the Manchester Development Corporation (MDC) to the Wall Street Tower Limited Partnership (WST). The original loan from MDC to WST in 1985 was financed by a federal Urban Development Action Grant (UDAG).

Current principal amounts outstanding are as follows:

Note secured by a third mortgage, due November 1, 2015, interest at 9.25%	\$2,366,557
Unsecured note, payable in full, on June 1, 2015 interest at 8%	<u>3,787,000</u>
	<u>\$6,153,557</u>

On June 20, 1990, WST refinanced the second mortgage loan to MDC with two separate promissory notes in the amounts of \$2,366,557 and \$3,787,000. No Partner is personally obligated on these notes. The \$2,366,557 third mortgage note bears interest at 9.25% compounded quarterly. The apartment complex is pledged as collateral on this note. Payments of principal and interest are due quarterly. The payments on this note are 19.7% of the scheduled payments and relate to accrued interest only. As of December 31, 2007, 19.7% of the scheduled annual payment amounted to \$70,901. Any unpaid interest and principal is due November 1, 2015. The unpaid interest at September 30, 2007 was \$14,735,560.

Respectfully submitted,

  
William E. Sanders  
Finance Officer

Cc: Jay Minkarah  
Brandy Stanley  
Tom Arnold

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**Parking Division**

# Memo

**To:** Committee on Lands & Buildings  
**From:** Brandy Stanley  
**Date:** 2/11/2008  
**Re:** Changes to the Wall Street Tower Lease

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Since the draft of the proposed lease was delivered to the Aldermen, there have been a few changes, detailed below. As of these changes, both parties are in agreement with the terms of the lease.

- First paragraph – addition of pickup trucks as a definition of passenger vehicles
- Section 1.2 – deletion of requirement for any renewal option to include irrevocably any additional spaces
- Section 2.3 – deletion of any reference to Seacoast Career Schools
- Section 2.3 – addition of \$20 lost card fee for any access cards not surrendered
- Section 20.3 – deletion of the city's requirement to cause sublessees or invitees to abide by the rules and regulations
- Section 22 (e) – deletion of invitees from city's requirement to cause them not to abide by obligations and covenants of the lease

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# **CITY OF MANCHESTER**

## **PARKING DIVISION**



Brandy Stanley  
Parking Manager  
bstanley@manchesternh.gov

February 8, 2008

Alderman George Smith  
Chairman, Lands and Buildings Committee  
One City Hall Plaza  
Manchester, NH 03101

Dear Alderman Smith:

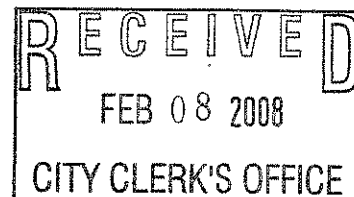
As you may know, the city's 20 year lease for parking spaces in the Wall Street Tower expires on February 29<sup>th</sup>, 2008. We have been working with the ownership of the building for the last few months to negotiate a new lease for parking spaces in the facility. We have been successful in coming to terms with the ownership that represent a significant savings over the current lease and that accommodate the parkers that need to use the facility. Following is a brief synopsis of the history and terms of the proposed lease, which is attached to this letter.

### **Terms of the Existing Lease**

The existing lease requires the city to pay for 400 spaces in the facility at a monthly rate of \$80 per space. In addition to the \$80 per space, the city also pays a portion of real estate taxes and operating costs, which brings the total monthly rate to approximately \$104 per space, or \$499,200 per year.

The parkers currently using the facility under the lease are as follows:

- City Hall and Chase Building Employees – 120
- Seacoast Career School – 140
- REIT Management (Sublease) – 130
- Citizen's Bank (Sublease) – 150



The total number of parkers using the facility is 540, and we receive offsetting revenues of \$329,464 annually for a net loss to the city of \$169,736.

### Terms of the New Lease

The proposed lease was negotiated to reduce the city's costs as well as accommodate both city employees and Seacoast Career Schools. The students and faculty from Seacoast Career Schools were added to the garage in August of 2007 as a part of the Millyard Parking Plan. The goal of this particular portion of the Millyard Parking Plan was to remove parkers from Commercial Street in the heavily congested north end, thus allowing additional leasing and relieving parking stresses on the area. This move has been very successful and generally well received by the school, and it is important to us to continue keeping these parkers off the street.

The terms of the proposed lease are as follows. We intend to initially lease 250 spaces, which will accommodate the city's employees and Seacoast Career Schools. The two sublease parties under the original agreement will not be parking under the new lease.

- Monthly rate per space - \$70
- Minimum spaces guaranteed to Owner – 120
- Additional space option – up to 330 additional spaces if available in the garage
- Term - 5 years with a total of 5 renewal options of 2 years each
- Rate Increases – rate is fixed for the first 5 years, then increases by CPI, providing the rate per space never exceeds market less \$10.

The proposed lease gives us the flexibility to add or subtract spaces under the lease with the exception of the city employees, and the shorter term allows us to exit the lease should the parking spaces not be necessary in the future.

As of the commencement date of the lease, the annual cost to the city will be \$210,000 with offsetting revenues of \$67,200.

### Final Lease

In the interests of time, we have submitted the attached lease for the committee's review. The lease is the result of a conference call with the City's council and the Owner's council, during which all parties agreed to the changes to be made. As of the time of this letter, the City Solicitor has not had time to verify that the changes as agreed to have been made to our satisfaction. Should there be any changes to the draft attached, I will bring them to the committee's attention at the meeting.

Please do not hesitate to contact me should you have any questions or require any further information.

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Sincerely,

Brandy Stanley  
Parking Manager

CC: Committee Members  
Tom Arnold  
Jay Minkarah

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# Agreement for Parking Spaces

This Agreement is entered into as of the 1<sup>st</sup> day of March, 2008, between Wall Street Tower Limited Partnership, a New Hampshire limited partnership, P.O. Box 994, 1 Stow Road, Marlton, NJ 08053, ("WSTLP"), and the City of Manchester, City Hall, Manchester, NH 03101, ("City"), for the right to park passenger motor vehicles in the Wall Street Tower parking garage, located at 555 Canal Street, City of Manchester, County of Hillsborough, State of New Hampshire (the "Garage").

## WITNESSETH

THAT, WHEREAS, WSTLP is the owner of real property known as Wall Street Tower, 555 Canal Street, Manchester, New Hampshire, and

WHEREAS, WSTLP desires to provide parking spaces for passenger motor vehicles in the Garage to City, and City desires to take same from WSTLP upon the terms hereinafter set forth; and

WHEREAS, City's right to park passenger motor vehicles in the Garage shall be evidenced by "parking credentials" issued by WSTLP to City from time to time to permit access to areas in the Garage.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein set forth, WSTLP and City agree as follows:

## 1. TERM OF AGREEMENT.

1.1 This Agreement commences on the 1<sup>st</sup> day of March, 2008, and expires on the 28th day of February, 2013 ("Initial Term").

1.2 Subject to Section 4.3 below, City shall have the option to extend the Initial Term for five (5) successive periods of two (2) years each upon the same terms and conditions set forth in this Agreement. Each option to extend the Initial Term shall be exercised by City, if at all, by written notice to WSTLP given not less than six (6) months prior to the expiration of the then-current term. The election to extend shall be irrevocable and shall include Additional Spaces (hereinafter defined), if any. Failure of City to timely exercise any option to extend shall terminate any subsequent options to extend.

## 2. PREMISES.

2.1 WSTLP grants to City and City agrees to take from WSTLP the right to park two hundred fifty (250) passenger motor vehicles in the Garage for the Initial Term of this Agreement and any extensions (together with Additional Spaces, the "Premises").

2.2 During the Initial Term and any extensions thereof, City shall be entitled to up to 200 additional parking spaces ("Additional Spaces") in the Garage at the same

\$70.00 per space rent, by written notice to WSTLP of City's irrevocable election to take the Additional Spaces provided in the sole and absolute opinion of WSTLP such Additional Spaces are available in the Garage taking into account the parking spaces needed for tenants, guests and invitees of WSTLP and other monthly parkers in the Garage. City may cancel any Additional Spaces taken by City on not less than sixty (60) days written notice to WSTLP.

2.3 Notwithstanding anything in this Agreement to the contrary, City may elect to reduce the number of parking credentials from 250 to not less than 120 in the event Seacoast Career Schools, who currently has a right to park 130 vehicles in the Garage, notifies City of the relocation of its school from its present location and termination of its parking arrangement with City. Such reduction (and corresponding reduction in the Monthly Minimum Fixed Rent (hereinafter defined)) shall be effective on the first day of the second month next following the month in which City notifies WSTLP of its election to reduce the number of parking credentials issued to City as specified in the notice and surrenders to WSTLP parking credentials equal to the number for which City seeks a reduction (the "Reduction Effective Date"). The Monthly Minimum Fixed Rent shall be reduced on the Reduction Effective Date by an amount equal to the product of \$70 and the number of parking credentials actually surrendered by City to WSTLP on or before the Reduction Effective Date regardless of the number specified in such notice.

2.4 The parties acknowledge that this Agreement is for the right to park passenger motor vehicles in the Garage which is unattended. Such right shall be evidenced by "parking credentials" regulating access to parking levels in the Garage issued by WSTLP to City for City's distribution to persons or sublessees designated by City subject to the terms of this Agreement.

3. **APPURTENANT RIGHTS.** The City's parking rights include the following appurtenant rights in common with WSTLP and its guests, invitees, tenants and others authorized by WSTLP.

a. For the purpose of vehicular or pedestrian access to and egress from the Premises, the right and easement in common with the WSTLP and others to use, without restriction, any vehicular entrance or exit to or from the garage, the right to use any driveway or ramp in the garage and the right to pass through any security gate or booth.

b. For the purpose of pedestrian access to the Premises, the right in common with the WSTLP and others to use, without restriction, any elevator.

c. For the purpose of pedestrian access to the Premises, the right in common with the WSTLP and others to use, without restriction, the stairs located at the south end of the garage.

4. **RENT.**

4.1 City shall pay to WSTLP, in advance on the first day of each month, commencing March 1, 2008, without demand or set off, monthly rent in the amount of \$17,500 (\$70.00 per parking credential issued to City as of the first day of the preceding calendar month) ("Monthly Minimum Fixed Rent"). In no event shall the Monthly

Minimum Fixed Rent during the Initial Term and any extensions thereof be less than \$8,400 (\$70 multiplied by 120 parking credentials).

4.2 In addition to the Monthly Minimum Fixed Rent, City covenants and agrees to pay to WSTLP, without demand, abatement, offset or deduction, rent for the Additional Spaces, if any, at the monthly rate of \$70 for each parking credential issued per Additional Space ("Additional Spaces Monthly Fixed Rent"). The Monthly Minimum Fixed Rent and the Additional Spaces Monthly Fixed Rent (together sometimes referred to as "Minimum Rent") shall be paid on the first day of each calendar month during the Initial Term and any extensions thereof, determined as provided in Section 4.1 above.

4.3 The Minimum Rent shall be adjusted as provided herein commencing March 1, 2013 in the event City elects to extend the Initial Term pursuant to Section 1.2 hereof.

As used in this Section 4.3,

a. "Index" shall mean the "Consumer Price Index for All Urban Consumers (1982-84 = 100)" (CPI-U) All Items relating to Northeast and issued by the Bureau of Labor Statistics of the United States Department of Labor. In the event the foregoing index shall be hereafter converted or otherwise revised, WSTLP shall have the right to select with City's consent not to be unreasonably withheld or delayed, from such available indices, the index or combination of indices to be used for purposes of this subparagraph. If the said Bureau shall cease publication of indices relating to the foregoing statistical information, WSTLP shall have the right to select any index or combination of indices of similar statistical information published by any nationally recognized publisher of statistical information.

b. "Anniversary Month" shall mean the calendar month commencing March 1, 2013 and March 1 of each year thereafter.

c. "Base Index" shall mean the Index for March 1, 2008.

d. "Cost of Living Increase" shall mean the percentage determined by reference to a fraction, the numerator of which shall be the Index in the Anniversary Month less the Base Index, and the denominator of which shall be the Base Index.

e. "Minimum Rent" shall mean the sum of the Monthly Minimum Fixed Rent and the Additional Spaces Monthly Fixed Rent, in effect in the month immediately preceding the Anniversary Month.

f. Commencing with the Lease Year beginning on March 1, 2013, and in each Lease Year thereafter, WSTLP shall furnish to City, within thirty (30) days of such time as the Index for the Anniversary Month is published, a statement setting forth the Base Index, the Index for the Anniversary Month of the year for which the Cost of Living Increase is to be made and the Cost of Living Increase (the "Annual Statement"). If the Index for the Anniversary Month in question shall exceed the Base Index, the Minimum Rent for and with respect to the twelve-month period commencing on the Anniversary Month of the year for which the Cost of Living Increase is to be made, shall be increased (the "Adjusted Monthly Rent") by multiplying the Minimum Rent by the Cost of Living Increase, provided, however, that in no event shall an adjustment under this Section 4.3

result in a decrease of the Minimum Rent or shall such Adjusted Monthly Rent exceed the monthly charge for parking in comparable parking facilities in the vicinity of the Garage in the month preceding the Anniversary Month, reduced by \$10.00.

For example, assuming City exercises its first option to extend the Initial Term, the number of parking credentials outstanding on February 28, 2012 is 325, the comparable monthly parking charge is \$75.00, the Minimum Rent is \$22,750, the Base Index is 227 and the Index in the Anniversary Month is 272.4, the Adjusted Monthly Rent for the succeeding twelve months commencing March 1, 2013 shall be \$22,750. If the comparable parking charge is \$95.00 in the foregoing example, the Adjusted Monthly Rent is \$27,300.

4.4 Rental and any other sums payable by City hereunder not paid when due shall bear interest at an annual rate of two percent plus the prime rate charged from time to time by the Bank of America, N.A., Boston, Massachusetts, or its successor, from the due date until paid.

5. **QUIET ENJOYMENT.** WSTLP agrees that upon City's paying the rent and performing the covenants, agreements and conditions of this Agreement City shall peaceably and quietly have, hold and enjoy the Premises during the Initial Term of this Agreement and any extensions thereof.

6. **WARRANTIES AND CONDITION.**

6.1 WSTLP warrants and represents that it is the owner of the Garage and has authority to execute this Agreement. WSTLP further warrants and covenants that (a) at the commencement of the Initial Term herein the Premises shall be in good condition and repair for use as a parking facility for motor vehicles, (b) the Premises shall comply with all state and federal laws, regulations, ordinances and codes now in effect or which become effective and are applicable to the Premises during the term herein and (c) WSTLP has not received any notice and is not aware of any violations of state or federal laws or regulations affecting the Premises, including, but not limited to, the Occupational Safety and Health Act of 1970. WSTLP shall be responsible, at its expense, for compliance with all environmental and disability matters, laws, regulations, ordinances, and codes including the Americans with Disability Act of 1990 that may be applicable to the Premises.

6.2 Notwithstanding the foregoing, if the cost of compliance with the provisions of Sections 6.1 and 11 hereof exceeds \$50,000 for any single condition or matter or \$100,000 in the aggregate, WSTLP may terminate this Agreement by written notice to City in which event this Agreement shall be terminated on the date specified in the notice which date shall be not less than six (6) months from the date of the notice unless the conditions or matters triggering the notice of termination require a sooner termination date in which event this Agreement shall terminate on such earlier date and neither party shall have any rights or obligations hereunder, except obligations accruing prior to the date of termination.

7. **TAXES.** WSTLP agrees to pay any and all real estate taxes and assessments levied upon or assessed against the Premises as same become due and, upon request, provide City with evidence of such payment.

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**8. EMINENT DOMAIN.**

8.1 In the event the entire Premises shall be taken under any statute or by right of eminent domain, then when title to, or possession of, the Premises is taken, this Agreement shall automatically terminate and the rent shall be adjusted as of the time of such taking.

8.2 City shall not be entitled to any portion of the condemnation award or proceeds relating to City's interest under this Agreement or to participate in any condemnation action or proceedings.

8.3 In the event of a taking of less than the entire Premises, defined for purposes of this Section 8.3 as a reduction of more than 50 spaces in the number of parking spaces in the Garage, provided sufficient parking spaces remain in the sole opinion of WSTLP to accommodate the parking requirements of WSTLP, including WSTLP's residential tenants, guests and invitees, this Agreement shall continue in effect except that the Minimum Rent shall be equitably adjusted to reflect the number of parking spaces reduced as a result of the taking.

**9. GENERAL CONDITIONS.**

9.1 City shall use the Premises for the parking of passenger motor vehicles only. Any motor vehicle maintenance or repair performed in the Garage, or any other use of the Premises without the prior consent of WSTLP or WSTLP's agent, is prohibited.

9.2 City shall be notified of any cleanup or other work being completed in the garage or parking lot that necessitates moving vehicles. WSTLP shall endeavor to provide a one (1) week notice to City of such work.

9.3 City may sublease any or all of the spaces provided under this Agreement. If the term of the sublease exceeds ninety (90) days, WSTLP must approve the subtenant, which approval shall not be unreasonably withheld. The name, address and contact information of each sublessee shall be given by City to WSTLP upon request of WSTLP.

**10. DAMAGE AND DESTRUCTION.**

10.1 WSTLP covenants and agrees, that, if the Premises are damaged or destroyed by fire or other casualty, City shall have the right at its sole option, to elect to (a) terminate this Agreement, effective on the date of such damage or destruction, and, if advance rent has been paid, WSTLP shall refund the pro rata portion thereof upon termination of this Agreement; or (b) continue to occupy and use any undamaged part of the Premises which is fully available for use, in which event the parties agree to negotiate a new rent schedule taking into consideration the loss of parking spaces; or (c) receive an abatement of the rent from the date of such damage or destruction until such time as WSTLP has repaired and restored the remaining Premises to the same condition as existed immediately prior to such damage or destruction, without diminution or change of location or size.

10.2 In the event City elects either options (b) or (c) in the preceding



paragraph, it is understood by the parties that time is of the essence and that WSTLP will proceed with due diligence to repair and restore the Premises to the conditions as existed before such damage or destruction. City's election shall be made by written notice to WSTLP within ten (10) days after the date of such damage or destruction and shall be effective as of such date.

**11. REPAIR AND MAINTENANCE.** WSTLP shall at its expense, perform all maintenance and repair to the garage, maintain striping, and perform custodial services to keep the surfaces and stairways in a clean condition. WSTLP shall perform all snowplowing, salting and sanding of the Garage. All capital and structural maintenance, repair and/or replacement of or on the Premises shall be promptly and diligently performed by WSTLP at WSTLP's expense, and in compliance with the Americans with Disabilities Act of 1990. City shall have no duty, obligation or responsibility for repairs or maintenance to the Premises of any type or kind.

**12. LIABILITY/INDEMNIFICATION.**

12.1 WSTLP hereby agrees to protect, defend, indemnify, and hold the City of Manchester and its employees, agents, officers and servants free and harmless from any and all losses, claims, liens, demands and causes of action of every kind and character including but not limited to, the amounts of judgments, penalties, interests, court costs, legal fees and all other expenses incurred by the city arising in favor of any party including claims, liens, debts, personal injuries including injuries sustained by employees of the City, death or damages to property (including property of the City) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising out of WSTLP's obligations under this Agreement. WSTLP agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, or suits at the sole expense of the WSTLP. WSTLP also agrees to bear all other cost and expenses related thereto, even if the claim or claims alleged are groundless, false or fraudulent. This provision is not intended to create any cause of action in favor of any third party against WSTLP or the City or to enlarge in any way the WSTLP's liability but is intended solely to provide for indemnification of the City from liability for damages or injuries to third persons or property arising from WSTLP's performance hereunder.

12.2 Notwithstanding anything herein to the contrary, the provisions of Section 12.1 above shall exclude and WSTLP shall not be liable for, damage to motor vehicles or the contents thereof, unless solely caused by the acts of WSTLP or its employees or agents, such risks being expressly assumed by City, its employees and agents.

**13. INSURANCE.**

13.1 WSTLP agrees to maintain in full force and effect, to the extent available at commercially reasonable rates:

a. Comprehensive general liability insurance written on occurrence form, including completed operations coverage, personal injury liability coverage, broad form property damage liability coverage and contractual liability coverage insuring the agreements contained herein. The minimum limits of liability carried on such insurance shall be \$1,000,000 each occurrence and, where applicable, in the aggregate combined

single limit for bodily injury and property damage liability; \$1,000,000 annual aggregate personal injury liability.

b. Any and all deductibles on the above described insurance policies shall be assumed by and for the account of, and at the sole risk of the WSTLP.

c. Insurance companies utilized must be admitted to do business in New Hampshire or be on the insurance commissioner's list of approved non-admitted companies and shall have a rating of (A) or better in the current edition of best's key rating guide.

d. WSTLP agrees to furnish certificate(s) of the above mentioned insurance to the City of Manchester within fourteen (14) days from the date of this agreement and, with respect to the renewals of the current insurance policies, at least thirty (30) days in advance of each renewal date. Such certificates shall name the City of Manchester as additional insured and shall state that in the event of cancellation or material change, written notice shall be given to the City of Manchester, Office of Risk Management, One City Hall Plaza, Manchester, New Hampshire 03101 at least thirty (30) days in advance of such cancellation or change.

e. The purchase of the insurance required of the furnishing of the aforesaid certificate shall not be a satisfaction of WSTLP's liability hereunder or in any way modify WSTLP's indemnification responsibilities to the City of Manchester.

13.2 City may terminate this Agreement in the event WSTLP fails to maintain the insurance coverage referenced in Section 13.1 above (which may be provided under a blanket policy) upon ten (10) days notice to WSTLP unless WSTLP provides evidence of such insurance coverage within such ten (10) day period to City.

14. **NO RECORDATION.** This Agreement shall not be recorded.

15. **TERMINATION.**

15.1 Either party shall have the right to terminate this Agreement upon a breach by the other party of any of the covenants, terms and conditions hereof, provided the defaulting party first receives written notice of such breach and fails to remedy same within thirty (30) days after said notice thereof is received, or fails to commence curing such breach within said thirty-day period in the event such breach cannot be reasonably cured within thirty (30) days; provided City shall not be entitled to more than two (2) notices of nonpayment of Minimum Rent in any twelve (12) month period.

15.2 Either party shall also have the right to terminate this Agreement in the event the other party files a voluntary petition or similar action in bankruptcy, insolvency, receivership or makes an assignment for the benefit of creditors, which action is not dismissed within sixty (60) days.

15.3 In the event of a default by City, WSTLP may terminate this Agreement, in which event the Minimum Rent for the balance of the term shall become immediately due and payable. WSTLP shall use its reasonable best efforts to mitigate its damages.



**20. ADDITIONAL COVENANTS.**

20.1 WSTLP and City acknowledge the Lease dated June 25, 1985 between WSTLP and City relating to the Garage ("Original Lease") is terminated effective the date of commencement of this Agreement. City and WSTLP acknowledge that the other has fully performed their respective obligations under the Original Lease and neither has any claims thereunder against the other.

20.2 WSTLP and City further acknowledge the Original Lease contemplated (i) construction of one or more other buildings (ii) the use by occupants of such buildings of the Garage for parking and (iii) easements relating to such use were executed by the parties. The buildings were never constructed and City and WSTLP agree the easements executed by the parties should be discharged of record. WSTLP and City agree to cooperate so as to discharge of record such easements and other documents relating thereto.

20.3 WSTLP shall promulgate from time to time reasonable Rules and Regulations relating to the use of the Garage. City shall comply with, and shall cause its sublessees', employees, agents and invitees to comply with such Rules and Regulations. City shall terminate the parking privileges of any person or sublessee, upon request of WSTLP, violating such Rules and Regulations.

20.4 This Agreement may be signed in one or more counterparts (or with counterparts signature pages) which, taken together, shall constitute a fully executed Agreement and shall be considered a single document. Telefax signatures shall be taken as originals.

**21. COVENANTS OF CITY. City agrees:**

a. Upon not less than 15 days' prior written request by WSTLP, to execute, acknowledge and deliver to WSTLP a statement in writing certifying that this Agreement is unmodified and in full force and effect (or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), the number of outstanding parking credentials issued by WSTLP to City, the dates to which the Minimum Rent has been paid, whether there exists any uncured default by WSTLP or any event which with the passage of time or the giving of notice will give rise to a default and, if so, the nature of such default and whether any options to extend or to adjust rent have been exercised. Any such statement delivered pursuant to this Section may be relied upon by any mortgagee of the Premises, prospective purchaser or mortgagee of the Premises or any prospective assignee of any such mortgagee.

b. To permit WSTLP and its designees to use in excess of 100 parking spaces in the Garage, without reduction in the Minimum Rent, before the hour of 8:00 a.m. and after the hour of 5:00 p.m. Monday through Friday (except holidays) and 24 hours per day on Saturday, Sunday or holidays, so long as such use does not interfere with the use and enjoyment of the Premises as provided herein by City, any permitted sublessee.

c. To observe and comply with the reasonable Rules and Regulations consistent with the permitted uses that WSTLP shall from time to time promulgate for the orderly operation of the Garage, including, without limitation, the use by City of parking

credentials or other control measures issued by WSTLP which shall afford WSTLP a reasonably satisfactory means for controlling and accounting for City's use of the Premises.

d. To defend, indemnify and save harmless WSTLP from all injury, loss, claim, or damage to or of any person or property related, directly or indirectly, to the Premises or City's use thereof arising from City's failure to perform its covenants and obligations under this Agreement or from any act or omission of City or City's licensees, agents, invitees or employees. WSTLP specifically acknowledges, however, that this provision applies to City solely in its capacity as a lessee hereunder and does not, and is no way intended to, apply to City's general obligations, if any, to WSTLP, the Premises or the building in its capacity as the municipality in which the Premises is located.

e. City acknowledges receipt of 250 parking credentials. City shall acknowledge receipt of additional credentials as and when issued by WSTLP and WSTLP shall acknowledge receipt of parking credentials surrendered by City pursuant to the terms of this Agreement. At the end of the Initial Term or any extension thereof, City shall deliver to WSTLP all parking credentials issued to City or \$20.00 for each parking credential issued but not surrendered.

f. At the expiration or earlier termination of the term as provided in this Agreement, to surrender and yield up the Premises and parking credentials to WSTLP, and to remove City's signs, goods and effects permitted by WSTLP, including any machinery, equipment or vehicles on the Premises, and to repair any damage caused by the removal.

g. City agrees to maintain, and upon request of WSTLP, to provide to WSTLP a schedule listing the name, make and year and model of the motor vehicle, license tag number and parking credential number of each person issued a parking credential.

## **22. NEGATIVE COVENANTS OF CITY.**

City covenants at all times during the term:

a. Not to make any installations, alterations or additions in, to or on the Premises nor to permit the making of any holes in the walls, partitions, ceilings or floors without the prior written consent of WSTLP.

b. Not to injure, deface or otherwise harm the Premises; nor commit any nuisance nor permit the emission of any unreasonable noise or odor, in each instance consistent with the right to make use of the Premises for the permitted uses; nor make any use of the Premises which is contrary to any law or ordinance.

c. Not to obstruct in any manner the hallways, stairways, elevators, aisles and other common facilities of the Garage or the building or the sidewalks or other approaches to the Garage or the building.

d. Not to place any signs on or about the Premises except signs identifying individual parking spaces in conformity with reasonable design standards for such signs established by WSTLP.

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e. Not to permit any employees, agents, or invitees of City to violate any covenant or obligation of City under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date first above written.

WSTLP  
WALL STREET TOWER LIMITED PARTNERSHIP  
By: Wall Street Tower L.L.C., General Partner  
By: Wall Street – Michaels Corp., Manager

By: \_\_\_\_\_  
Name: John J. O'Donnell  
Title: \_\_\_\_\_

CITY - City of Manchester

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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